IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2254 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHOBHANABEN JETHABHAI KANERIA

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN P JASANI for Petitioner No. 1
MR KM PARIKH AGP OVERNMENT PLEADER for Respondent No. 1
MR DD VYAS for Respondent No. 2-3
RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/08/2001

ORAL JUDGEMENT

This petition has been filed by the widow of Jethalal Laxmanbhai Kaneria for a direction to the respondents no. 2 and 3 to release the amount of Family Pension with effect from 14-1-1985 with a benefit of

temporary increase and with a benefit of Medical Allowance, which is payable to the petitioner and for further direction to release the amount of interest @ 9% with effect from 1-6-1989 upon the unpaid difference of amount of family pension till the date of payment of arrears of family pension and for a direction to the respondents to pay minimum pension @ Rs. 375/- forthwith till finalisation of the petitioner's case with regard to family pension and to compute the difference of the amount of family pension and the interest with effect from 1-6-1989 and the amount of medical allowance 1-4-1989 and the amount of provident fund, gratuity and other admissible benefits.

2. The husband of the petitioner joined his service as a Primary Teacher from 28-8-1979 pursuant to the order dated 21-8-1979 passed by the Manager of Rajkot District Sarvoday Yojana, Kasturbadham, Rajkot. He was appointed in the pay scale of Rs.290-560. It is also alleged that the District Primary Education Officer, District Panchayat, Rajkot took over the management of Primary School of Kasturbadham of Sarvodaya Yojana with effect from 1-9-1981 and the petitioner's husband being a Primary Teacher of Sarvodaya Yojana, he was absorbed by the respondent no. 2 and the respondents treated the service of the petitioner's husband as Primary Teacher of Education Committee of the District Panchayat, Rajkot, with effect from 1-9-1981. Thus, the husband of the petitioner completed service of 1 year, 7 months and 3 days, on 1-9-1981. The petitioner's husband was posted as primary teacher and was given the charge of Head-Master of Umradi Primary School of Jetpur Taluka under the District Panchayat. The petitioner's husband was a member of General Provident Fund. The petitioner's husband died on 13-1-1985 while he was in service. Thus, the petitioner's husband has put in total length of service for more than 5 years i.e. 5 years, four months and 15 days and hence the petitioner is entitled to the family pension, interest on the unpaid amount of family pension and other pensionary benefits including the medical allowance, gratuity, provident fund, permissible under the Government Resolutions and Family Pension Scheme, 1972. The State of Gujarat has reduced the eligibility criteria for the family pension from 10 years to five years by the Government Resolution dated 11-5-1990. The said resolution dated 11-5-1990 makes eligible to the member of family of Panchayat employees inclusive of primary teachers. The petitioner applied for family pension and when she did not get any response from the respodnent she gave a legal notice dated 28-1-1991 and the respondent no. 3 replied vide letter

dated 7-2-1991 that those primary teachers working under Sarvoday Scheme are not entitled and eligible to get the benefit of scheme of promotion and retirement, therefore, the family pension could not be sanctioned.

3. The contention of the learned counsel for the petitioner is that the respondents - authorities have rejected the representation of the petitioner arbitrarily, illegally and against the Government Resolution dated 11-5-1990. The petitioner is entitled to get family pension pursuant to the GR dated 11-5-1990 which was passed after considering the judgment of this Court, the Family Pension Scheme, 1972 has been extended to all the members of the family including the dependents of the deceased with effect from 1-10-1977 and the arrears of the family pension is payable with effect from 1-10-1977 with the interest @ 9% p.a. till the date of payment of arrears of family pension. Temporary increase of the pension sanctioned by the Government from the time to time at the rate shown in Annexure-I accompanying to the resolution shall also be admissible. The widows of the Government servants who were sanctioned arrears before 31-3-1989 will be entitled to draw pension together with temporary increase at the rate shown in Annexure-1 and 2 to the said Resolution. The petitioner was required to apply in the Form No. A. In the case of Government employee who retired after 1-6-1971 is entitled to the family pension as per the Rules in force. After his death eligible members of his family would be entitled to the family pension at the minimum rate of Rs. 375/-/p.m. Family Pension Scheme 1972 provides that family pension is admissible in case of death while in service after five years of continuous service to the eligible family pension. As provided in the 1972 Scheme, the Family Pension is admissible in case of death while in service after 5 years of continuous service to the family members after the Government servants, death. The family pension is also admissible to the family of Government servant who has rendered at least 10 years service. This limit of 10 years for the purpose of family pension is reduced to 5 years but the service rendered should be certified to have been satisfactory by the pension sanctioning authority. No arrears on account of medical reimbursement/medical allowance is payable on that benefit is allowed with effect from 1-4-1989. The resolution has been made applicable to the eligible members of the family of Panchayat employees including the primary teachers and employees born on work-charged establishment, teaching and non-teaching staff of non-Government Secondary Schools, Higher Secondary Schools, Colleges and Universities etc. subject to the

limitation of the scope of admissibility.

4. Learned counsel for the petitioner also contended that the pensioners constitute a class by themselves. No further classification can be made by introducing a criterion of "being in service" on a particular date and "retiring thereafter. Therefore, it is clear that a provision regarding cut off date by insertion of words "who were in service on or after 1st June, 1971" has been declared as discreminatory for creating such artificial classes and there is no reasonable nexus with the object to be achieved. He relied on the decision of this Court in the case of Indumatiben A. Patel Vs. State of Gujarat reported in 1987 (1) G.L.R.. 389, wherein the words "who were in service on or after 1-7-1971 creating cut off date have been held to be illegal, void and violative of Article 14 of the Constitution of India on the basis of the Supreme Court's decision in the case of D.S. Nakara and others Vs. Union of India, reported in AIR 1983 SC 130, wherein it has been held as under :

> The words, "who were in service on the date 31st March, 1979 and retiring from service on or after that date" excluding the date of commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstances can be served without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed."

5. The learned counsel for the petitioner also relied on the decision of this Court in the case of Kamlaben wd/o Govindlal Harilal Sheth Vs. State of Gujarat & another, reported in 1989 (2) G.L.R.. 1068, wherein it has been held as under :

> "As held by the Supreme Court, aforesaid unconstitutional and discriminatory portion in the resolution dated January 1, 1972 and October 17, 1977 can be easily severed and both these Resolutions can be enforced and implemented after severance of the unconstitutional part and it has been declared that the words "who were in service on 1st June, 1971 or are recruited thereafter" occurring in paragraph (1), the words "on or after 1st June, 1971" and "and who has retired on or after 1st June, 1971 and who has died or who may die on or after that date" in paragraph (2)

and clause (a) of paragraph 12 of the Resolution dated January 1, 1972, the words "i.e. will be applicable to those who have retired on 1st October, 1977 and thereafter" in paragraph 3 of the Resolution dated October, 17, 1977, are arbitrary and violative Art. 14 of the Constitution of India and they shall stand deleted from the said two Resolutions. The said two resolutions shall be enforced and implemented after severance and deletion of the said unconstitutional part."

6. On the basis of the authorities cited above, the learned counsel for the petitioner contended that after death of the petitioner's husband in 1985, the date mentioned in the resolution dated 11-5-1990 would not be applicable and the petitioner would be entitled to the family pension on the basis of that resolution without having that date as well as minimum period of five years' service as required under the said Resolution.

7. Learned counsel for the petitioner also relied on the Government Resolution June, 1988, wherein length of service of the Government employee has also been removed and now even any Government employee who has worked for a day is entitled to the family pension after the death of the Government employee. As such, the petitioner's husband even served in under Sarvodaya Yojana is excluded. Admittedly, the petitioner has worked as a temporary teacher in Kasturbadham of Sarovdaya Yojana under District Primary Education Officer, District Panchayat, Rajkot and he died while he was in service and hence the petitioner is entitled to the family pension.

8. Learned A.G.P. produced a copy of the Government Resolution dated 16-4-1998 and according to that Government Resolution, the period of service of Kasturbadham of Sarovdaya Yojana is treated as qualified service for the purpose of family pension. He has stated that the respondent no. 3 has sent a letter dated 25-7-2001 to the respondent no. 2 along with the proposal to sanction pension in light of the aforesaid Government Resolution dated 16-4-1998.

9. After considering the facts and circumstances of this case and the submissions made by the learned counsel for the parties as well as material on record, admittedly the petitioner had served in the Kasturbadham of Sarvodaya Yojana for the period from 28-8-1978 till 1-9--1981 and the District Primary Education Officer, District Panchayat, Rajkot took over the management of

Primary School run by the Kasturbadham of Sarovdaya Yojana with effect from 1-9-1981 and the petitioner's husband died on 13-1-1985. Thus, the petitioner's husband rendered served for more than 5 years and hence the petitioner is entitled to the family pension under the provisions of the Government Resolutions referred to above. It appears that the petitioner is entitled to the family pension under the aforesaid Government Resolutions. Therefore, this petition is liable to be allowed.

10. Accordingly, this petition is allowed and the respondent no. 2 is directed to send a proposal of the family pension of the petitioner to the respondent no. 3 and the respondent no. 3 is directed to consider and decide the proposal with regard to the family petition of the petitioner in light of the aforesaid Government Resolutions, by a speaking in accordance with law within a period of two months from presentation of a copy of this order. In case, the respondent no. 3 finds that the petitioner is entitled to the family pension in that event, the respondent no. 3 will make payment to the petitioner within a one month thereafter with arrears if admissible under the relevant Rules, Regulations and Government Resolutions. In case the respondent no. 3 finds that the petitioner is not entitled to the family pension, as claimed by the petitioner, the respondent no. 3 will pass a speaking order with reasons and in that case the petitioner would be at liberty to take all legal recourse. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/